

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jasen Silver and Diane Silver,

Complainants,

vs.

San Jose Water Company (U168W),

Defendant.

(ECP)

Case 16-03-008

(Filed on March 14, 2016)

DECISION DENYING COMPLAINT**Summary**

This decision denies the request of Jasen and Diane Silver for a credit of \$359.95 from San Jose Water Company.

This proceeding is closed.

1. Procedural History and Positions of the Parties

Jasen and Diane Silver (Complainants) filed the above-captioned complaint seeking a credit from San Jose Water Company (SJWC) for what they claim to be an erroneously high water bill for the service at their residence located at 1562 Mount Herman Drive in San Jose, California. An evidentiary hearing was held on May 26, 2016.

Complainants contend that SJWC overbilled them for the water usage invoiced in the December 23, 2015 water bill for period covering October 16, 2015

to December 17, 2015. The subject bill was for the amount of \$756.91 but SJWC gave Complainants a one-time courtesy credit for the drought surcharge of \$396.96, which leaves a balance of \$359.95.

Complainants are mother and son. They are both named as customers on the SJWC's invoice. The mother lives out of state. The son is the sole occupant of the residence. Complainants contend they did not use the invoiced amount of water usage of 84 centum cubic feet (ccf) for the subject billing period.

Complainants claim that, after installing new grass at the property in October 2015, they only watered the new lawn every other day and only for three minutes each on those days. Complainants claim they never used 84 ccf for a single billing period and that it is improbable to use that amount at their property for a single billing period. Complainants claim that they installed bib locks to prevent potential water theft from their property. They also claim that, in 2013, they upgraded plumbing at the subject residence so it is unlikely that there was any leak at the property that could explain that invoiced usage amount. The water audit conducted by SJWC found no leaks at the customer residence. Finally, Complainants argue that SJWC's meter test results show two fail entries, in the report, which suggest that the meter likely malfunctioned and over-registered the actual water delivery to the subject residence.

SJWC denies the allegations in the complaint. In its defense, SJWC claims that it has tested the customers' meter and conducted a water audit. The meter test result (average of three highest test results of four tests, excluding the fourth lowest test result, per industry standard) shows that the subject meter performed at 100.73 percent accuracy, well within the Commission's meter accuracy requirements. SJWC also explains that Complainants' contention that the meter failed two tests reflects an inaccurate understanding of the meter test

report. Instead, SJWC explains the proper understanding of that report is that the meter failed one test and the second “fail” entry on the report was a summary entry merely reflecting that there was at least one failed test. SJWC also argues that even with one “fail” entry for the test showing the meter registering at 101.69 percent accuracy, SJWC contends this level of inaccuracy (variance of 1.69 percent inaccuracy) could not explain the high usage spike (from less than 10 ccf during the prior billing periods) to 84 ccf during the subject billing cycle. The water audit also did not detect leaks at the customers’ residence that could account for 84 ccf. Lastly, SJWC contends that Complainants’ past usages show that they reached similar water usage levels as the amount at issue on at least three different prior occasions (June 2012 (101 ccf), August 2012 (88 ccf) and June 2013 (80 ccf).)

In sum, SJWC argues that Complainants’ argument that they never used such amount of water is contradicted by evidence. SJWC contends that its meter was inspected and tested for malfunction and no malfunctioning was detected, and beyond the meter – the water delivery point – it is Complainants’ pipe and responsibility. SJWC therefore argues that Complainants should be held responsible for the payment of the water usage registered and billed (with the one-time courtesy credit of \$396.96 for the drought surcharge).¹ Even with the SJWC’s one-time courtesy credit for the drought surcharge of \$396.96 to the subject invoice for \$756.91, there remains an unpaid balance of \$359.95.

¹ The drought surcharge of \$396.96 was triggered during the subject billing period and invoiced on December 23, 2015; and Complainants’ account was credited a one-time courtesy credit of \$396.96 for the drought surcharge from the total balance owed. The drought surcharges were implemented in June 2015 as approved by the Commission in SJWC’s Schedule 14.1.

2. Burden of Proof

California law has long held that the party bringing a claim has the burden of proving that claim.² The Commission follows this rule in its complaint cases.³ This means that Complainants have the burden to prove by a preponderance of the evidence (a majority or 51 percent or more) that their allegations are true.

3. Discussion

General Order (GO) 103-A and Tariff Rule No. 18 establish the Commission's standards and requirements applicable to the issues raised in this complaint. GO 103-A, Section I.2.AB, defines the water meter as the device used for purpose of measuring the quantity of water delivered. The Commission's meter reading, testing and bill error correction standards are set forth in the Tariff Rule No. 18, as required by GO 103-A. GO 103-A, Section IV.3, sets out the meter accuracy requirements. Specifically, the meter may not register at a rate more than two percent fast (average of highest three out of four test results); and if the meter is tested and found to be registering more than two percent fast (average of highest three out of four test results), then the remedy is to adjust the bill amount by the adjusted meter reading accounting for the percentage of over-registered water delivery.⁴

² Cal. Evid. Code. Section 500 (2008). *See Sargent Fletcher Inc. v. Able Corp.* (2003) 110 Cal. App. 4th 1658, 1667 (citations omitted.)

³ *See In Complaint of Service-All-Tech, Inc. v. PT&T Co.* (Cal. PUC, 1977) 83 CPUC 135, Decision No. 88223 (complaint relating to the disconnection of telephone service where the court found that complainant had the burden of proof and that complainant's "failure to present any evidence present[ed] a total lack of meeting that burden"). *See also Pacific Bell Telephone Company, d/b/a AT&T California vs. Fones4All Corporation* (Cal. PUC, 2008) Decision 08-04-043, 2008 Cal. PUC LEXIS 132.

⁴ Tariff Rule No. 18-B-1.

Here, Complainants have not demonstrated that SJWC improperly charged for water that was not delivered to the subject residence. The meter such as the one at the subject residence is triggered by pressure change at the customer's location (e.g., faucet being turned on, toilet being flushed, etc.). Once the pressure changes at the customer's location, that pressure change triggers the water delivery and the meter registers the amount of water delivered through it.

There was no evidence that this pressurized meter malfunctioned and incorrectly registered delivery of more water than what was actually used at the customers' residence. The result of the meter tests show that the meter was operating within 100.73 percent accuracy which complies with the Commission's accuracy requirements under Tariff Rule No. 18 and GO 103-A.⁵ American Water Work Association Standard provides that SJWC should take three highest flow results and then take algebraic average which equals 100.73 percent. The meter was found to be over-registering by 0.73 percent (and far less than the 2 percent) to trigger overcharge refund /credit provision. In addition, that 0.73 percent over-registering would not even begin to account for the high usage during the subject billing period. No other evidence was presented to show that the meter reading of the water usage for the subject billing period was erroneous.

Complainants state that they installed Kentucky bluegrass sod in October of 2015. In addition, the meter readings since the subject billing period (and since the meter testing and water audit report for this property conducted by SJWC) show the high usage spike reflected on the December 23, 2015 invoice (for the period starting October 16 to December 17, 2015) is not continuing, and

⁵ SJWC contends its meter testing equipment is annually calibrated and certified in compliance with the National Institute of Standards and Technology Handbook 44 by Aver Weigh-Tronix.

their level of use has declined to the usage level consistent with their prior average usage level. Up until the time of the evidentiary hearing, there had been no further usage spike at the customers' residence. The water audit shows that there was no leak at the customer's property -- except a minor sprinkler leak which was detected by the SJWC's representative but Complainant denies.

Evidence shows the usage level at the subject residence dropped to pre-spike level after one billing period without any detection or repair of identified leaks. This shows that leakage at the customer location is not the cause of the high usage during the subject billed cycle. The timing and the surrounding circumstances suggest the most plausible cause of usage spike was the higher water usage associated with watering the new lawn. Finally, the result of the meter tests show the amount of the water usage billed (which was based on the meter reading for the subject billing period) was most likely accurate. For these reasons, the request for a credit for the current unpaid balance is denied.⁶

4. Exemption from Comment Period

This is an expedited complaint proceeding and pursuant to Rule 14.7(b) of the Commission's Rules of Practice and Procedure, no 30-day public review and comment period is required.

5. Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Kimberly H. Kim is the assigned Administrative Law Judge in this proceeding.

⁶ The only remaining issue and the request being denied here is the request for the credit of unpaid balance of \$359.95. This is the amount due under the December 23, 2015 bill with the one-time courtesy credit which SJWC applied.

O R D E R

IT IS ORDERED that:

1. The Complaint of Jasen Silver and Diane Silver is denied.
2. Case 16-03-008 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.